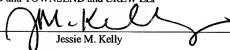


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on September 29, 2009

TOWNSEND and TOWNSEND and CREW LLP

By: _____


Jessie M. Kelly

PATENT
Docket No.: 02307K-186431US
Client Ref. No.: UCLA Case No.: 1999-543-

5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Randal Eckert et al.

Application No.: 10/706,391

Filed: November 12, 2003

For: ANTI-MICROBIAL TARGETING
CHIMERIC PHARMACEUTICAL

Customer No.: 20350

Confirmation No.: 5819

Examiner: Robert A. Zeman

Art Unit: 1645

**REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT
DETERMINATION
UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e), and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following it is respectfully requested that Applicants be granted a minimum patent term adjustment of 482 days.

STATEMENT OF FACTS

Correct Patent Term Adjustment and the Bases Under 37 C.F.R. § 1.702 for the Adjustment

The correct patent term adjustment is 482 days, not 131 days as listed on the front page of U.S. Patent 7,569,542 B2.

The period of adjustment under § 1.702(a) is 432 days ("A delay").

The period of adjustment under § 1.702(b) is 467 days ("B delay").

The period adjustment under § 1.704(a) is 417 days ("applicant delay").

The period of adjustment under § 1.703(f) is 482 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e), §§ 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants submit that the Office did correctly calculate the term adjustments to include the term adjustments that Applicants are entitled to 432 days under 37 CFR § 1.703(a). (See **Exhibit A**, attached hereto).

The relevant dates are shown in the tables below.

Filing Date	14-month Date	Date of 1 st Restriction Requirement	Days over 14 months (§ 1.703(a)(1))
November 12, 2003	January 12, 2005	December 29, 2005	351

Date of Applicant Reply	4-month Date	Date Response (Notice of Allowance) mailed	Days over 14 months (§ 1.703(a)(2))
June 16, 2008	October 16, 2008	October 27, 2008	11

Date of Issue Fee Payment	4-month Date	Date the Letters Patent Issued	Days over 4 months (§ 1.703 (a)(2))
January 26, 2009	May 29, 2009	August 4, 2009	70

2. § 1.703(b)

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, November 12, 2006, and ends on February 22, 2008, the date a Request for Continued Examination (RCE) in the above-identified U.S. Patent was filed with the U.S. Patent Office.

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b)(1) is **467 days** as shown in the table below.

Filing Date	3-year Date	Date RCE filed	Days over 3 years through Issuance (§ 1.703(b)(1))
November 12, 2003	November 12, 2006	February 22, 2008	467 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e)

4. **Overlapping periods under § 1.703(a)-(e)**

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §1.54(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*).

There are no overlapping periods under § 1.703(a)-(e).

5. **Applicant delay under 37 C.F.R. §1.704**

The Office did correctly calculate the period of adjustment under § 1.704(a)-(e) as **417days** as indicated by the Patent Term Adjustment History (*see Exhibit A*). The 417days is the sum of four periods of delay under 37 C.F.R. § 1.704. The specific delay types are defined below:

Reduction under § 1.704(b)	182 days
Reduction under § 1.704(c)(7)	219 days
Reduction under § 1.704(c)(8)	16 days

Total reduction under § 1.704 417 days

6. Total Patent Term Adjustment under § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.703(f) is as follows:

Sum of delay under § 1.703(a)-(e):

Type "A" delay:	432 days
Type "B" delay:	467 days
"A" and "B" overlap:	0 days
<u>Adjusted Patent Office Delay</u>	<u>+ 899 days</u>

The above adjusted Patent Office delay (§ 1.703(a)-(e)) is subtracted by the reduction to the patent term due to Applicant delay (§ 1.704) to determine total Patent Term Adjustment under 37 C.F.R. § 1.703(f):

Patent Office Delay	+ 899 days
Applicant Delay	- 417 days
<u>Total Patent Term Adjustment</u>	<u>+ 482 days</u>

Terminal disclaimer

The instant application is not subject to a terminal disclaimer.

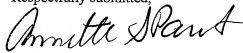
PATENT TERM ADJUSTMENT DETERMINATION

Pursuant to *Wyeth*, Applicants are entitled to **482 days** of patent term adjustment, *i.e.*, [899 days (Adjusted "A" delay + "B" delay)] minus [417 days (applicant delay)].

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Annette S. Parent". The signature is fluid and cursive, with the first name being the most prominent.

Annette S. Parent.
Reg. No. 42,058

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